

1 PATRICK H. HICKS, ESQ., Bar # 004632  
2 MONTGOMERY Y. PAAK, ESQ., Bar # 10176  
3 AMY L. BAKER, ESQ., Bar # 11907  
4 LITTLER MENDELSON, P.C.  
5 3960 Howard Hughes Parkway  
6 Suite 300  
7 Las Vegas, NV 89169-5937  
Telephone: 702.862.8800  
Fax No.: 702.862.8811  
Email: [phicks@littler.com](mailto:phicks@littler.com)  
[mpaek@littler.com](mailto:mpaek@littler.com)  
[abaker@littler.com](mailto:abaker@littler.com)

8 Attorneys for Defendants  
9 BELLAGIO, LLC and VINCENT ROTOLO

10 UNITED STATES DISTRICT COURT  
11 DISTRICT OF NEVADA

12 ANDI KRAJA,

13 Case No. 2:15-cv-01983-APG-NJK

14 Plaintiff,

15 vs.

16 BELLAGIO, LLC, a Nevada Corporation;  
17 VINCENT ROTOLO, an individual; ROE  
Business Organizations I-X; and DOE  
INDIVIDUALS I-X, Inclusive,

18 Defendants.

19  
20 DEFENDANTS' ANSWER TO PLAINTIFF'S  
21 SECOND AMENDED COMPLAINT

22 Defendants BELLAGIO, LLC and VINCENT ROTOLO ("Defendants") by and through  
their attorneys of record, Littler Mendelson, hereby answer Plaintiff's Second Amended Complaint  
as follows:

23 I. **JURISDICTION AND VENUE**

24 1. Answering Paragraph 1 of the Second Amended Complaint, Defendants admit the  
Court has subject matter jurisdiction only with respect to Plaintiff's Title VII claims for national  
origin discrimination and retaliation based on the 2015 Lago test and audition and that the Court may  
exercise supplemental jurisdiction over Plaintiff's claims arising under state law. Defendants deny  
the Court has subject matter jurisdiction over all other remaining claims. Defendants admit that

1 Plaintiff was employed by Defendant Bellagio in Clark County, Nevada but deny that all of the  
 2 material events complained of occurred at all and therefore deny that all of the material events  
 3 complained of took place in Clark County, Nevada.

4       2. Answering Paragraph 2 of the Second Amended Complaint, Defendants admit this is  
 5 a civil action and Plaintiff has brought claims under federal statutes prohibiting discrimination and  
 6 claims under the common law of Nevada. Defendants deny they deprived Plaintiff's rights under  
 7 any federal statute or state common law and deny that Plaintiff is entitled to any damages.

8       3. Answering Paragraph 3 of the Second Amended Complaint, Defendants admit that  
 9 Plaintiff's complaint purports to assert claims under Title VII of the Civil Rights Act of 1964, but  
 10 deny they violated Plaintiff's rights under Title VII of the Civil Rights Act of 1964.

11       4. Answering Paragraph 4 of the Second Amended Complaint, Defendants admit they  
 12 received notice that Plaintiff filed a Charge of Discrimination identified as EEOC No. 487-2015-  
 13 00789, and that the Charge alleges national origin discrimination and retaliation and contains an "x"  
 14 in the box titled "CONTINUING ACTION." Defendants deny that they discriminated against  
 15 Plaintiff based on his national origin or retaliated against him. Defendants are without knowledge or  
 16 information sufficient to form a belief as to the remaining allegations contained in paragraph 4 and  
 17 therefore deny the remaining allegations contained therein.

18       5. Answering Paragraph 5 of the Second Amended Complaint, Defendants admit they  
 19 received a copy of a Right to Sue Letter from the EEOC for Charge No. 487-2015-00789 dated June  
 20 9, 2015.

21       6. Answering Paragraph 6 of the Second Amended Complaint, Defendants deny the  
 22 allegations contained therein.

23       7. Answering Paragraph 7 of the Second Amended Complaint, Defendants deny the  
 24 allegations contained therein.

25       **II. PARTIES**

26       8. Answering Paragraph 8 of the Second Amended Complaint, Defendants admit  
 27 Plaintiff has been employed by Defendant Bellagio from January 2011 until present in Clark County,  
 28 Nevada, and are without knowledge or information sufficient to form a belief as to the remaining

1 allegations contained therein and on that basis deny the remaining allegations in Paragraph 8.

2       9. Answering Paragraph 9 of the Second Amended Complaint, Defendants admit  
3 Defendant Bellagio is a Nevada Limited Liability Company duly formed and authorized to conduct  
4 business under the laws of the State of Nevada and deny the remaining allegations contained therein.

5       10. Answering Paragraph 10 of the Second Amended Complaint, Defendants admit the  
6 allegations contained therein.

7       11. Answering Paragraph 11 of the Second Amended Complaint, Defendants state that  
8 the allegations contained in Paragraph 11 do not contain factual allegations to which a denial or  
9 admission by Defendants is required.

10     12. Answering Paragraph 12 of the Second Amended Complaint, Defendants admit that  
11 Defendant Bellagio is required to comply with certain Nevada state and federal discrimination laws  
12 as applicable to it, but because no specific state and federal statutes are identified in Paragraph 12,  
13 Defendants have insufficient information to form a belief as to the allegations and therefore deny the  
14 allegations contained therein.

15     **III. FACTS COMMON TO ALL CLAIMS**

16     13. Answering Paragraph 13 of the Second Amended Complaint, Defendants admit only  
17 that Plaintiff self-identified that he is a white Caucasian male and that Plaintiff was employed by  
18 Defendant Bellagio from January 2011 to the present. Defendants are without knowledge or  
19 information sufficient to form a belief as to the remaining allegations contained in Paragraph 13 and  
20 therefore deny the remaining allegations contained in Paragraph 13.

21     14. Answering Paragraph 14 of the Second Amended Complaint, Defendants admit  
22 Plaintiff started working at Bellagio's Circo restaurant in January 2011 as a Gourmet Food Server.  
23 Defendants are without knowledge or information sufficient to form a belief as to whether Plaintiff  
24 was the only Albanian employed at the Circo restaurant or whether other similarly situated  
25 employees were Hispanic-American, German-American, Hungarian-American, and American as  
26 Defendant Bellagio does not request or otherwise collect information related to its employees'  
27 national origin and therefore Defendants deny those allegations. Defendants deny all remaining  
28 allegations contained in paragraph 14.

1       15. Answering Paragraph 15 of the Second Amended Complaint, Defendants deny the  
2 allegations contained therein.

3       16. Answering Paragraph 16 of the Second Amended Complaint, Defendants deny the  
4 allegations contained therein.

5       17. Answering Paragraph 17 of the Second Amended Complaint, Defendants deny the  
6 allegations contained therein.

7       18. Answering Paragraph 18 of the Second Amended Complaint, Defendants deny the  
8 allegations contained therein.

9       19. Answering Paragraph 19 of the Second Amended Complaint, Defendants deny the  
10 allegations contained therein.

11       20. Answering Paragraph 20 of the Second Amended Complaint, Defendants deny the  
12 allegations contained therein.

13       21. Answering Paragraph 21 of the Second Amended Complaint, Defendants admit that  
14 Plaintiff requested security be called on December 3, 2012 and deny the remaining allegations  
15 contained therein.

16       22. Answering Paragraph 22 of the Second Amended Complaint, Defendants deny the  
17 allegations contained therein.

18       23. Answering Paragraph 23 of the Second Amended Complaint, Defendants admit that  
19 shift assignments were done based on seniority under the applicable Collective Bargaining  
20 Agreement and deny the remaining allegations contained therein.

21       24. Answering Paragraph 24 of the Second Amended Complaint, Defendants admit only  
22 that Plaintiff reported concerns about the schedule but deny that Plaintiff reported Rotolo and Forlini  
23 discriminated and retaliated against Plaintiff because of his national origin and deny all remaining  
24 allegations contained in Paragraph 24.

25       25. Answering Paragraph 25 of the Second Amended Complaint, Defendants admit only  
26 that Defendant Bellagio addressed Plaintiff's concern about the schedule but deny that Plaintiff  
27 reported Rotolo and Forlini discriminated against Plaintiff based on his national origin and deny all  
28 allegations contained Paragraph 25.

1        26. Answering Paragraph 26 of the Second Amended Complaint, Defendants deny the  
 2 allegations contained therein

3        27. Answering Paragraph 27 of the Second Amended Complaint, Defendants deny the  
 4 allegations contained therein.

5        28. Answering Paragraph 28 of the Second Amended Complaint, Defendants deny that  
 6 Plaintiff's "situation became worse" or that Plaintiff's "search for other employment would be in  
 7 vain." Defendants are without knowledge of information sufficient to form a belief as to the  
 8 remaining allegations contained therein and therefore deny the remaining allegations in Paragraph  
 9 28.

10       29. Answering Paragraph 29 of the Second Amended Complaint, Defendants deny the  
 11 allegations contained therein.

12       30. Answering Paragraph 30 of the Second Amended Complaint, Defendants are without  
 13 knowledge or information sufficient to form a belief as to whether Plaintiff contacted Alvarez or  
 14 whether Alvarez advised Plaintiff to contact Randy Morton and therefore deny those allegations.  
 15 Defendants deny the remaining allegations contained in paragraph 30.

16       31. Answering Paragraph 31 of the Second Amended Complaint, Defendants deny the  
 17 allegations contained therein.

18       32. Answering Paragraph 32 of the Second Amended Complaint, Defendants admit only  
 19 that on or around December 3, 2012, Plaintiff complained that Rotolo yelled at him and that Plaintiff  
 20 requested security be called. Defendants deny Plaintiff reported that Rotolo had engaged in calling  
 21 him derogatory names based on his Albanian national origin and deny all remaining allegations  
 22 contained in Paragraph 32.

23       33. Answering Paragraph 33 of the Second Amended Complaint, Defendants admit only  
 24 that Plaintiff received a verbal warning on December 3, 2012, but deny that the verbal warning was  
 25 retaliatory and deny the remaining allegations contained therein.

26       34. Answering Paragraph 34 of the Second Amended Complaint, Defendants admit that  
 27 Plaintiff emailed Randy Morton on June 13, 2013 and deny the remaining allegations contained  
 28 therein.

1       35. Answering Paragraph 35 of the Second Amended Complaint, Defendants deny the  
 2 allegations contained therein.

3       36. Answering Paragraph 36 of the Second Amended Complaint, Defendants admit only  
 4 that Plaintiff applied at Bellagio's Prime restaurant and deny the remaining allegations contained  
 5 therein.

6       37. Answering Paragraph 37 of the Second Amended Complaint, Defendants admit  
 7 Plaintiff applied to Bellagio's Prime restaurant, that there was an issue with Defendant Bellagio's  
 8 online application system, and that Defendant Bellagio assisted Plaintiff with his Prime application.  
 9 Defendants deny all remaining allegations contained therein.

10      38. Answering Paragraph 38 of the Second Amended Complaint, Defendants are without  
 11 knowledge or information sufficient to form a belief as to the allegations contained therein and  
 12 therefore deny the allegations in Paragraph 38.

13      39. Answering Paragraph 39 of the Second Amended Complaint, Defendants admit  
 14 Defendant Rotolo resigned in November 2013, and that Daniela DeGrazia was an interim General  
 15 Manager of Circo but deny that Ms. DeGrazia "replaced" Rotolo who was an Assistant Manager at  
 16 Circo. Defendants deny all remaining allegations contained in paragraph 39.

17      40. Answering Paragraph 40 of the Second Amended Complaint, Defendants admit that  
 18 on January 6, 2014, Plaintiff was suspended pending investigation along with another employee,  
 19 Christian Johnson and that on January 7, 2014 Plaintiff emailed Dominique Bertolone and Jessica  
 20 Harbaugh regarding the January 6, 2014 incident with Christian Johnson. Defendants deny the  
 21 remaining allegations contained therein.

22      41. Answering Paragraph 41 of the Second Amended Complaint, Defendants admit that  
 23 Plaintiff filed a grievance with the Culinary Union regarding his January 6, 2014 suspension pending  
 24 investigation. Defendants deny all remaining allegations contained therein.

25      42. Answering Paragraph 42 of the Second Amended Complaint, Defendants deny the  
 26 allegations contained therein.

27      43. Answering Paragraph 43 of the Second Amended Complaint, Defendants deny the  
 28 allegations contained therein.

1           44. Answering Paragraph 44 of the Second Amended Complaint, Defendants deny the  
 2 allegations contained therein.

3           45. Answering Paragraph 45 of the Second Amended Complaint, Defendants admit that  
 4 Plaintiff told DeGrazia about a "Fat Andy" sign and deny the remaining allegations contained  
 5 therein.

6           46. Answering Paragraph 46 of the Second Amended Complaint, Defendants deny the  
 7 allegations contained therein.

8           47. Answering Paragraph 47 of the Second Amended Complaint, Defendants deny the  
 9 allegations contained therein.

10          48. Answering Paragraph 48 of the Second Amended Complaint, Defendants deny the  
 11 allegations contained therein.

12          49. Answering Paragraph 49 of the Second Amended Complaint, Defendants deny the  
 13 allegations contained therein.

14          50. Answering Paragraph 50 of the Second Amended Complaint, Defendants admit that  
 15 the Culinary Union and Bellagio negotiated a "test and audition" for Lago which was memorialized  
 16 in a Memorandum of Agreement and deny the remaining allegations contained therein.

17          51. Answering Paragraph 51 of the Second Amended Complaint, Defendants admit that  
 18 employees were provided a training manual for Lago and that free classes were held at the Culinary  
 19 Training Academy to train employees. Defendants deny the remaining allegations contained therein.

20          52. Answering Paragraph 52 of the Second Amended Complaint, Defendants are without  
 21 knowledge or information sufficient to form a belief as to whether Plaintiff attended the CTA or  
 22 studied the manual. Defendants admit the Lago audition for all servers included items that were not  
 23 in the training materials. Defendants deny the remaining allegations contained therein.

24          53. Answering Paragraph 53 of the Second Amended Complaint, Defendants admit  
 25 Plaintiff received a score of 86.3% on the written test and that he failed the audition and his  
 26 combined score did not meet the negotiated 75% to transfer to Lago. Defendants are without  
 27 knowledge sufficient to form a belief as to the remaining allegations contained therein and therefore  
 28 deny the allegations in Paragraph 53.

1       54. Answering Paragraph 54 of the Second Amended Complaint, Defendants admit they  
 2 received records that indicate Plaintiff went to Harmony Health on February 27, 2015 and  
 3 Summerlin Hospital Urgent Care on March 4, 2015. Defendants are without knowledge or  
 4 information sufficient to form a belief as to the remaining allegations contained therein and therefore  
 5 deny the remaining allegations in Paragraph 54.

6       55. Answering Paragraph 55 of the Second Amended Complaint, Defendants admit that  
 7 Bellagio received notice from Culinary Union 226 that Plaintiff filed a grievance regarding the Lago  
 8 test and audition and that Plaintiff e-mailed Emmanuel Cornet on March 5, 2015 and March 9, 2015  
 9 to schedule a Step One Meeting regarding the Lago test and audition. Defendants admit that  
 10 Bellagio agreed to meet with Plaintiff on March 13, 2015 as a courtesy. Defendants deny the  
 11 remaining allegations contained in Paragraph 55.

12       56. Answering Paragraph 56 of the Second Amended Complaint, Defendants admit that a  
 13 meeting took place on March 13, 2015. Defendants admit that Plaintiff's grievance was untimely  
 14 and the meeting was not considered a Step One meeting. Defendants admit they discussed  
 15 Plaintiff's Lago test and audition scores at the March 13, 2015 meeting. Defendants deny the  
 16 remaining allegations contained in Paragraph 56.

17       57. Answering Paragraph 57 of the Second Amended Complaint, Defendants admit that  
 18 there were items on the Lago audition for all servers that were not included in the training manual  
 19 and deny the allegations contained therein.

20       58. Answering Paragraph 58 of the Second Amended Complaint, Defendants admit that  
 21 some servers received passing scores on the Lago audition but Defendants are without knowledge or  
 22 information sufficient to form a belief as to whether any of the servers who received passing scores  
 23 were not of Albanian national origin and therefore deny that allegation. Defendants deny the  
 24 remaining allegations in Paragraph 58.

25       59. Answering Paragraph 59 of the Second Amended Complaint, Defendants admit only  
 26 that Defendant Bellagio agreed to meet with Plaintiff on March 31, 2015. Defendants deny the  
 27 remaining allegations contained in Paragraph 59.

28       60. Answering Paragraph 60 of the Second Amended Complaint, Defendants deny the

1 || allegations contained therein.

#### **IV. CLAIMS FOR RELIEF**

**FIRST CLAIM:  
NATIONAL ORIGIN DISCRIMINATION  
IN VIOLATION OF TITLE VII, CIVIL RIGHTS ACT OF 1964.  
(against Defendant Bellagio)**

Defendants incorporate by reference their responses to the previous allegations set forth in Paragraphs 1 through 60 as though set forth fully herein.

61. Answering Paragraph 61 of the Second Amended Complaint, Defendants deny the allegations contained therein.

62. Answering Paragraph 62 of the Second Amended Complaint, Defendants deny the allegations contained therein.

63. Answering Paragraph 63 of the Second Amended Complaint, Defendants admit Plaintiff failed a test and audition in February 2015 to transfer to Lago restaurant pursuant to a Memorandum of Agreement between Bellagio and Culinary Union 226 and deny the remaining allegations contained therein.

64. Answering Paragraph 64 of the Second Amended Complaint, Defendants deny the allegations contained therein.

65. Answering Paragraph 65 of the Second Amended Complaint, Defendants deny the allegations contained therein.

66. Answering Paragraph 66 of the Second Amended Complaint, Defendants deny the allegations contained therein.

67. Answering Paragraph 67 of the Second Amended Complaint, Defendants deny the allegations contained therein.

68. Answering Paragraph 68 of the Second Amended Complaint, Defendants deny the allegations contained therein.

69. Answering Paragraph 69 of the Second Amended Complaint, Defendants deny the allegations contained therein.

<sup>70</sup> Answering Paragraph 70 of the Second Amended Complaint, Defendants deny the

1 allegations contained therein.

2 71. Answering Paragraph 71 of the Second Amended Complaint, Defendants deny the  
3 allegations contained therein.

4 **SECOND CLAIM:**  
**RETALIATION IN VIOLATION OF 42 U.S.C. §2000e-3**  
**(against Defendant Bellagio)**

5 Defendants incorporate by reference their responses to the previous allegations set forth in  
6 Paragraphs 1 through 71 as though set forth fully herein.

7 72. Answering Paragraph 72 of the Second Amended Complaint, Defendants deny the  
8 allegations contained therein.

9 73. Answering Paragraph 73 of the Second Amended Complaint, Defendants admit  
10 Plaintiff failed a test and audition in February 2015 to transfer to Lago Restaurant pursuant to a  
11 Memorandum of Agreement between Bellagio and the Culinary Union, and deny the remaining  
12 allegations contained therein.

13 74. Answering Paragraph 74 of the Second Amended Complaint, Defendants deny the  
14 allegations contained therein.

15 75. Answering Paragraph 75 of the Second Amended Complaint, Defendants deny the  
16 allegations contained therein.

17 76. Answering Paragraph 76 of the Second Amended Complaint, Defendants deny the  
18 allegations contained therein.

19 77. Answering Paragraph 77 of the Second Amended Complaint, Defendants deny the  
20 allegations contained therein.

21 78. Answering Paragraph 78 of the Second Amended Complaint, Defendants deny the  
22 allegations contained therein.

23 79. Answering Paragraph 79 of the Second Amended Complaint, Defendants deny the  
24 allegations contained therein.

25 80. Answering Paragraph 80 of the Second Amended Complaint, Defendants deny the  
26 allegations contained therein.

27 . . .

**THIRD CLAIM:**  
**INTENTIONAL INFILCTION OF EMOTIONAL DISTRESS – "FAT ANDY" SIGN**  
**(against Defendant Bellagio)**

Defendants incorporate by reference their responses to the previous allegations set forth in Paragraphs 1 through 80 as though set forth fully herein.

81. Answering Paragraph 81 of the Second Amended Complaint, Defendants deny the allegations contained therein.

82. Answering Paragraph 82 of the Second Amended Complaint, Defendants deny the allegations contained therein.

83. Answering Paragraph 83 of the Second Amended Complaint, Defendants deny the allegations contained therein.

84. Answering Paragraph 84 of the Second Amended Complaint, Defendants deny the allegations contained therein.

85. Answering Paragraph 85 of the Second Amended Complaint, Defendants deny the allegations contained therein.

86. Answering Paragraph 86 of the Second Amended Complaint, Defendants deny the allegations contained therein.

87. Answering Paragraph 87 of the Second Amended Complaint, Defendants deny the allegations contained therein.

**FOURTH CLAIM:**  
**INTENTIONAL INFILCTION OF EMOTIONAL DISTRESS – TEST AND**  
**AUDITION**  
**(against Defendant Bellagio)**

Defendants incorporate by reference their responses to the previous allegations set forth in Paragraphs 1 through 87 as though set forth fully herein.

88. Answering Paragraph 88 of the Second Amended Complaint, Defendants deny the allegations contained therein.

89. Answering Paragraph 89 of the Second Amended Complaint, Defendants deny the allegations contained therein.

90. Answering Paragraph 90 of the Second Amended Complaint, Defendants deny the

1 allegations contained therein.

2 91. Answering Paragraph 91 of the Second Amended Complaint, Defendants deny the  
3 allegations contained therein.

4 92. Answering Paragraph 92 of the Second Amended Complaint, Defendants deny the  
5 allegations contained therein.

6 93. Answering Paragraph 93 of the Second Amended Complaint, Defendants deny the  
7 allegations contained therein.

8 **FIFTH CLAIM:**  
9 **INTENTIONAL INTERFERENCE WITH**  
**PROSPECTIVE ECONOMIC ADVANTAGE**  
10 **(against all Defendants)**

11 Defendants incorporate by reference their responses to the previous allegations set forth in  
12 Paragraphs 1 through 93 as though set forth fully herein.

13 94. Answering Paragraph 94 of the Second Amended Complaint, Defendants deny the  
allegations contained therein.

14 95. Answering Paragraph 95 of the Second Amended Complaint, Defendants deny the  
allegations contained therein.

15 96. Answering Paragraph 96 of the Second Amended Complaint, Defendants are without  
knowledge or information sufficient to form a belief as to the allegations contained therein and  
therefore deny the allegations in Paragraph 96.

16 97. Answering Paragraph 97 of the Second Amended Complaint, Defendants deny the  
allegations contained therein.

17 98. Answering Paragraph 98 of the Second Amended Complaint, Defendants deny the  
allegations contained therein.

18 99. Answering Paragraph 99 of the Second Amended Complaint, Defendants deny they  
prevented or interfered with a prospective economically advantageous relationship and are without  
knowledge or information sufficient to form a belief as whether any of Defendants' actions, which  
are not specifically identified, were justified or privileged.

20 100. Answering Paragraph 100 of the Second Amended Complaint, Defendants deny the  
22  
24  
26  
28

1 allegations contained therein.

2       101. Answering Paragraph 101 of the Second Amended Complaint, Defendants deny the  
3 allegations contained therein.

4       102. Answering Paragraph 102 of the Second Amended Complaint, Defendants deny the  
5 allegations contained therein.

6       **III. DEMAND FOR JUDGMENT RELIEF**

7       Defendants are not required to respond to Plaintiff's Prayer for Relief. However, to the  
8 extent Plaintiff's Prayer for Relief asserts any factual allegations; Defendants deny each and every  
9 allegation set forth in Plaintiff's Prayer for Relief.

10                   **AFFIRMATIVE DEFENSES**

11                   **FIRST AFFIRMATIVE DEFENSE**

12       As a first separate and affirmative defense, Defendants allege that Plaintiff's Second  
13 Amended Complaint fails to state a claim upon which relief may be granted.

14                   **SECOND AFFIRMATIVE DEFENSE**

15       As a second separate and affirmative defense, Defendants allege that Plaintiff's claims are  
16 barred, in whole or in part, by the applicable statute of limitations.

17                   **THIRD AFFIRMATIVE DEFENSE**

18       As a third separate and affirmative defense, Defendants are informed and believe and  
19 thereupon allege that Plaintiff's claims are barred, in whole or in part, by the doctrines of estoppel,  
20 laches, and unclean hands.

21                   **FOURTH AFFIRMATIVE DEFENSE**

22       As a fourth separate and affirmative defense, Defendants are informed and believe and  
23 thereupon allege that Plaintiff has failed to mitigate his alleged damages.

24                   **FIFTH AFFIRMATIVE DEFENSE**

25       As a fifth separate and affirmative defense, Defendants allege that Plaintiff failed to exhaust  
26 his contractual, administrative, and/or statutory remedies.

27                   **SIXTH AFFIRMATIVE DEFENSE**

28       As a sixth separate and affirmative defense, Defendants allege that any relief Plaintiff may be

1 entitled to is barred and/or limited by the after-acquired evidence doctrine.

## 2 **SEVENTH AFFIRMATIVE DEFENSE**

3 As a seventh separate and affirmative defense, Defendants allege that any actions taken  
 4 concerning Plaintiff were done for legitimate, non-discriminatory business reasons consistent with  
 5 federal laws, state laws, and public policies.

## 6 **EIGHTH AFFIRMATIVE DEFENSE**

7 As an eighth separate and affirmative defense, Defendants allege that Defendants at all times  
 8 acted in good faith, without malice and were justified with regard to any legal obligations they may  
 9 have had towards Plaintiff.

## 10 **NINTH AFFIRMATIVE DEFENSE**

11 As a ninth separate and affirmative defense, Defendants allege that if discrimination and/or  
 12 retaliation occurred, Defendants did not know nor should have known of the allegedly  
 13 discriminatory and retaliatory conduct(s).

## 14 **TENTH AFFIRMATIVE DEFENSE**

15 As a tenth separate and affirmative defense, Defendants allege, assuming *arguendo*, that any  
 16 unlawful discrimination and/or retaliation occurred, that it exercised reasonable care to prevent and  
 17 promptly correct any discriminatory and/or retaliatory behavior and that Plaintiff unreasonably failed  
 18 to take advantage of any corrective opportunities provided by Defendant Bellagio.

## 19 **ELEVENTH AFFIRMATIVE DEFENSE**

20 As an eleventh separate and affirmative defense, Defendants allege that Plaintiff has failed to  
 21 set forth facts sufficient to support a claim for punitive damages, special damages, or attorney's fees.

## 22 **TWELFTH AFFIRMATIVE DEFENSE**

23 As a twelfth separate and affirmative defense, Defendants allege that Plaintiff is not entitled  
 24 to punitive damages because the alleged misconduct would be contrary to Defendants' good faith  
 25 efforts to comply with applicable federal law. Further, Plaintiff's claim for punitive damages is  
 26 invalid on its face or as applied to Defendants pursuant to Article IV, Section 2 and the 1st, 6th, 8th,  
 27 and 14th Amendments to the Constitution of the United States.

## **THIRTEENTH AFFIRMATIVE DEFENSE**

As a thirteenth separate and affirmative defense, Defendants allege that if Plaintiff is adjudged to be entitled to any recovery, Defendants are entitled to a set-off for any compensation, including without limitation to, workers' compensation benefits, unemployment compensation benefit, wages, salaries, and/or social security payments, received by Plaintiff.

## **FOURTEENTH AFFIRMATIVE DEFENSE**

As a fourteenth separate and affirmative defense, because the Second Amended Complaint is couched in conclusory and vague terms, Defendants cannot fully anticipate all affirmative defenses that may be applicable to this case. Accordingly, Defendants hereby reserve the right to assert additional affirmative defenses.

WHEREFORE, Defendants pray as follows:

1. That Plaintiff take nothing by reason of his Second Amended Complaint, and that judgment be entered in favor of Defendants;
2. That Defendants be awarded their reasonable attorney's fees and cost of suit incurred in defense of this action; and
3. For such other and further relief as the court may deem just and proper.

Dated: August 31, 2016

Respectfully submitted,

PATRICK H. HICKS, ESQ.  
MONTGOMERY Y. PAEK, ESQ.  
AMY L. BAKER, ESQ.  
LITTLER MENDELSON, P.C.

Attorneys for Defendants  
BELLAGIO, LLC and VINCENT ROTOLI

## **PROOF OF SERVICE**

I am a resident of the State of Nevada, over the age of eighteen years, and not a party to the within action. My business address is 3960 Howard Hughes Parkway, Suite 300, Las Vegas, Nevada, 89169. On August 31, 2016, I served the within document(s):

**DEFENDANTS' ANSWER TO PLAINTIFF'S SECOND AMENDED COMPLAINT**

By CM/ECF Filing – Pursuant to FRCP 5(b)(3) and LR 5-4, the above-referenced document was electronically filed and served upon the parties listed below through the Court’s Case Management and Electronic Case Filing (CM/ECF) system:

James P. Kemp, Esq.  
Victoria L. Neal, Esq.  
Kemp & Kemp, Attorneys at Law  
7435 W. Azure Drive, Suite 110  
Las Vegas, NV 89130

Attorneys for Plaintiff

I am readily familiar with the firm's practice of collection and processing correspondence for mailing and for shipping via overnight delivery service. Under that practice it would be deposited with the U.S. Postal Service or if an overnight delivery service shipment, deposited in an overnight delivery service pick-up box or office on the same day with postage or fees thereon fully prepaid in the ordinary course of business.

I declare under penalty of perjury that the foregoing is true and correct. Executed on August 31, 2016, at Las Vegas, Nevada.

Amulash

Erin Melwak

Firmwide: 142234678.1 060736.1097